

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

STEWART ABRAMSON and JAMES  
EVERETT SHELTON, individually and on  
behalf of a class of all persons and entities  
similarly situated,

Plaintiff

vs.

AGENTRA, LLC, ANGELIC  
MARKETING GROUP L.L.C., and  
MATTHEW JONES

Defendants.

Case No. 18-cv-615-PLD

COMPLAINT-CLASS ACTION

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AFFIDAVIT OF JOHN SPILLER

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BEFORE ME, the undersigned authority, on this day personally appeared John Spiller, who swore on oath that the following facts are true:

1. "My name is John Spiller. I am over the age of 18, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated. I am a principal of Rising Eagle Capital Group, LLC ("Rising Eagle"). I make this declaration based on my personal knowledge, as well as my investigation into Rising Eagle's regularly-kept business records.

2. "I am the custodian of the records of Rising Eagle. Attached hereto are records from Rising Eagle in response to the subpoena served by Plaintiffs and dated **August 19, 2019** (the "Subpoena"). These records are kept by Rising Eagle in the regular course of business, and it

was the regular course of business of Rising Eagle for an employee or representative of Rising Eagle with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in the record, and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

3. "My statements herein are in response to the Subpoena and it is my intent that my statements herein completely satisfy my obligations thereunder. All capitalized terms used in this *Affidavit* are intended to have the same meaning as those defined in the Subpoena, unless otherwise defined herein.

4. "Rising Eagle used Celerity Inc.'s 'MyDialer' for a brief period of approximately a month-and-a-half in or around April and May of 2018 to make outbound telephone calls for purposes of attempting to generate customers, leads, or sales for Scott Shapiro and Michael Smith of Health Advisors of America, Inc. (the "Calls"). Rising Eagle did not ever obtain any records pertaining to those calls from Celerity, nor is it in possession of any documents related to the MyDialer product.

5. "Rising Eagle used a proprietary dialer called 'Guaranteed Calls,' that Rising Eagle developed in-house to make the Calls. Guaranteed Calls is an ad hoc system and Rising Eagle does not possess any manuals, ESI, or correspondence associated with it, nor am I aware of the existence of any such documents.

6. "The business records attached to this Affidavit comprise all the records or other documents Rising Eagle has in its possession regarding calls or attempted calls made for or on behalf of Scott Shapiro and Michael Smith of Health Advisors of America, Inc. All records

reflect calls made with Guaranteed Calls.

7. "To make the Calls, Rising Eagle received files containing numbers to be called from Scott Shapiro and Michael Smith. For each of those files, Rising Eagle created a calling campaign within Guaranteed Calls.

8. "After the campaign was created, a voice recording was set to the campaign with specific button-press options corresponding to directions in the recording. For example, the recording may have directed callers to press "1" to be directed to an operator, or "2" to be added to Rising Eagle's do-not-call registry.

9. "The campaign was then set to parameters defining the speed at which calls were made and, when initiated, the campaign commenced calling in accordance therewith.

10. "No other steps were taken to make the calls, and they dialed automatically in sequential order."

11. If during the call the called party pressed the button corresponding to the recording's option to be transferred to an operator, the call was transferred to our client Health Advisors of America.

12. Rising Eagle has produced files containing records of all individuals that pressed a button and that call was transferred to Health Advisors of America.

13. If in the course of the subsequent discussion with our client's operator, the called party requested to be added to our do-not-call registry, we received that information only if the client provided it to us.


14. "Rising Eagle has produced two files containing recordings of the outgoing messages used in the Calls, as requested in Request 4 of the Subpoena.

15. "After conducting a diligent search, Rising Eagle has not identified in its possession any documents responsive to Request 5 of the Subpoena to the extent that the request refers to permission directly from the called parties.

16. "After conducting a diligent search, Rising Eagle has not identified in its possession any documents responsive to Request 6 of the Subpoena to the extent that the request refers to permission directly from the called parties.

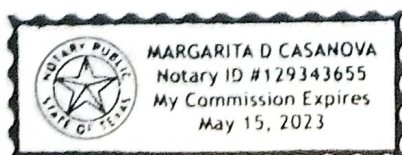
17. "After conducting a diligent search, Rising Eagle has not identified in its possession any documents responsive to Request 7 of the Subpoena.

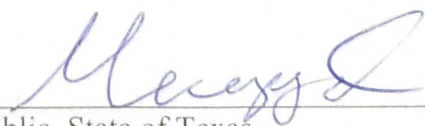
18. "After conducting a diligent search, Rising Eagle has provided correspondence it was able to retrieve that was exchanged with Health Advisors of America.

  
John Spiller, Affiant  
As Authorized Agent of and Custodian of Records  
of Rising Eagle Capital Group, LLC

THE STATE OF TEXAS   §  
                                      §  
COUNTY OF TRAVIS   §

Signed before me, the undersigned authority, on the 25<sup>th</sup> day of September, 2019, by John Spiller.



  
Notary Public, State of Texas